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In the High Court of Judicature at Madras

Dated:- 27.8.2007

Coram :-

The Honourable Mr.Justice K.RAVIRAJA PANDIAN
and
The Honourable Mrs.Justice CHITRA VENKATARAMAN

Tax Case (Appeal) Nos.89 and 90 of 2004

The Commissioner of Income Tax
Tamil Nadu I. Madras. .. Appellant in both the appeals.
Vs

M/s.S.A.E. (India) Limited,
29 & 30, Community Commercial Centre
New Delhi 57. .. Respondent in both the appeals.

TAX CASES (APPEAL) under Section 260A of the Income Tax Act against the order of the Income Tax Appellate Tribunal Madras 'C' Bench dated 25.8.2003 made in I.T.A.Nos.650 & 651 /Mds/2001 for the assessment year 1991-92 and 1992-93 against the order of the Commissioner of Income Tax [Appeals] V, Madras 34, dated 10.1.95 made in ITA.Nos.328/93-94 and 146/94-95 against the assessment order of the Deputy Commissioner of Income Tax, Special Range I, Madras dated 28.10.93 and 30.3.94 and madein PAN/GIR.No.47-004-CZ -7431/11-S.

For Appellant :Mr.J.Narayanasamy
For Respondent:Mr.Venkatnarayanan
for M/s. Subbaraya Aiyar

JUDGMENT

JUDGMENT OF THE COURT WAS DELIVERED BY K.RAVIRAJA PANDIAN,J

The appeals are filed against the order of the Income Tax Appellate Tribunal Madras 'C' Bench made in I.T.A.Nos.650 and 651 /Mds/1995 dated 25.8.2003 and admitted on the following substantial question of law:-

> "Whether on the facts and in the circumstances of the case, the Appellate Tribunal was right in law in holding that the Dividend Income, Profit on sale of investment, miscellaneous receipts, excess liability return back, interest on deposit, insurance and other claims, foreign exchange gain should be treated as part of income are to be deducted from the profits and relief should be calculated under section

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80HHC ?"

The relevant assessment years are 1991-92 and 1992-93.

2. The facts culminating in filing the present appeals proceed as follows:-

The assessee was doing business in design manufacture, supply and erection of Trans-lines, Electrification of Railways. For the said assessment years, the assessee claimed dividend income, profit on sale of investment, insurance on other claims, miscellaneous receipts, excess liability return back, interest on deposits, foreign exchange as part of the business income. The assessing officer disallowed the claim on the ground that the above income did not directly arise out of the conduct of the assessee's export business. Against that order the assessee preferred an appeal before the first appellate authority, the Commissioner of Income Tax Appeals, who allowed the appeal for the assessment year 1991-92 and partly allowed the appeal in respect of 1992-93. As against that order, the Department preferred appeals before the Income Tax Appellate Tribunal`. The Tribunal following the decision of this court in the case of CIT VS. N.S.C.SHOES (258 ITR 749) remitted the matter back to the assessing officer to pass a consequential order by following the principle of natural justice. That order is put in issue in this appeal on the ground that the reasoning given by the Tribunal by placing reliance on the case of CIT VS. N.S.C.SHOES (258 ITR 749) is not correct.

3. We heard the arguments of the learned counsel appearing on either side and perused the materials on record.

4. It could be seen from the order of the Tribunal that the Tribunal was of the view that in respect of computation of income under Section 80HHC of the Act, in relation to the items mentioned in Explanation(baa) thereof, the issue was covered by the decision of the Madras High Court rendered in the case of CIT VS. N.S.C.SHOES (258 ITR 749) wherein it has been held that 90% of the items mentioned in Explanation (baa) were to be deducted from the profits and the relief should be calculated under section 80HHC. The Tribunal directed the assessing officer to work out the relief under Section 80HHC in the light of the decision of this Court.

5. We are of the considered view that the observations made by the Tribunal in the order under appeal are not correct and made on an erroneous understanding of the law laid down by this Court in the case of CIT VS. N.S.C.SHOES (258 ITR 749). In that case the dispute related to the assessment year 1986-87 and the question of law under consideration was that whether the Tribunal was right in holding that the interest on amount deposited as guarantee fund forms part of profit derived from the export business and should be included in the profit of the assessment for computing deduction under Sections 80HH, 80HHC and 80I. Admittedly, Explanation (baa) to Section 80HHC has been inserted by the Finance (No.2) Act, 1991, with effect from 1.4.1992. Hence, the observation made

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by the Tribunal that in CIT VS. N.S.C.Shoes (258 ITR 749), it was held that 90% of the items mentioned in Explanation (baa) are to be deducted from the profits and the relief should be calculated under Section 80HHC is an incorrect observation. That observation cannot be allowed to stand.. To that extent the order of the Tribunal is set aside and the assessing officer is directed to consider the case in accordance with law, which was obtaining during the relevant period under consideration.

6. With these observations, the appeals are disposed of.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

krr/

To
1. The Assistant Registrar, Income-Tax Appellate Tribunal, III Floor, Rajaji Bhavan, Besant Nagar, Madras 90.
2. The Deputy Commissioner of Incometax, Special Range-I, Madras.
3. The Commissioner of Income Tax, [Appeals], V, Madras 34.
4. The Commissioner of Income Tax, Tamil Nadu I, Madras.
+ 1 CC To Ms.Pushya Sitaraman, Advocate SR NO.53442

Tax Case (Appeal) Nos.89 and 90
of 2004

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